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No. 84-

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

BALDWIN-UNITED CORPORATION
and D. H. BALDWIN COMPANY,
Petitioners,

v.

ROBERT M. EUBANKS, III, INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS,
Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

ROBERT J. WHITE
DAVID PETTIT
O'MELVENY & MYERS
400 South Hope Street
Los Angeles, CA 90071

ZOË E. BAIRD
Counsel of Record
JACOB M. LEWIS
JAMES P. NEHF
O'MELVENY & MYERS
1800 M Street, N.W.
Washington, DC 20036
(202) 457-5901

Of Counsel:
DEBEVOISE & PLIMPTON
875 Third Avenue
New York, NY 10022

WRIGHT, LINDSEY & JENNINGS
2200 Worthen Bank Building
Little Rock, AR 72201

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APPENDIX A

SUPREME COURT OF ARKANSAS

No. 84-162

BALDWIN-UNITED CORPORATION
and D. H. BALDWIN COMPANY,
Appellants,

v.

LINDA N. GARNER, INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS,
Appellee.

Oct. 22, 1984

HUBBELL, Chief Justice.

Appellants Baldwin-United Corporation and D. H. Baldwin Company appeal from the circuit court's order which adopted a Plan of Rehabilitation proposed by appellee, the Arkansas Insurance Commissioner, and denied appellants' motion to amend the Plan. The Plan concerns three Arkansas insurance companies: National Investors Pension Insurance Company, National Investors Life Insurance Company and Mt. Hood Pension Insurance Company. All three companies are appellants' subsidiaries. Appellants argue two points on appeal. First, they assert that the circuit court erred in making a series of rulings about its jurisdiction which prevent appellants from asserting claims against their subsidiaries in any other forum. Second, appellants argue that the Plan of Rehabilitation is not fair and equitable because it will

compensate policyholders far beyond what they would have received had the insurance companies never encountered financial difficulties. We affirm.

Baldwin-United Corporation is the corporate parent of the Baldwin-United group of companies. D. H. Baldwin Company is a subsidiary of Baldwin-United. Two of the Arkansas insurance subsidiaries, National Investors Pension Insurance Company and National Investors Life Insurance Company, are direct subsidiaries of D. H. Baldwin. Mt. Hood Pension Insurance Company is an indirect subsidiary of Baldwin-United.

The Arkansas insurance companies' principal insurance product is a single premium deferred annuity (SPDA). An SPDA guarantees the purchaser the right to a deferred stream of annuity payments in exchange for the payment of a one-time premium. Interest is periodically credited to the policyholder's account at a specified crediting rate. The policyholder can withdraw principal and interest by surrendering the policy, by making periodic withdrawals, or by electing to receive annuity payments.

On July 13, 1983, the circuit court entered Orders of Rehabilitation concerning each of Appellants' Arkansas insurance subsidiaries, appointed the Arkansas Insurance Commissioner as Rehabilitator of the insurance companies, and ordered her to take possession of all the insurance companies' property and to propose a plan for their rehabilitation.

In its July 13, 1983 order, the court entered an injunction "restraining all persons and other legal entities" from "the making of claims or the commencement of further prosecution of any actions in law or equity or administrative [proceedings] except in this Court", and from "the making of any levy, garnishment or execution against any of the property, personal or real, of respondent or its assets or its policyholders."

On September 26, 1983, appellants entered reorganization proceedings under Chapter 11 of the Federal Bankruptcy Code, 11 U.S.C. §§ 1101 *et seq.* Those proceedings are pending in the United States Bankruptcy Court for the Southern District of Ohio.

On October 17, 1983, appellee submitted to the court below a proposed Plan of Rehabilitation. The proposed Plan sought to provide the Arkansas insurance companies, within 3½ years, with assets at least sufficient to support the amount of the accumulated value of their single premium annuities as of May 1, 1984 plus, at a minimum, an assured rate of interest from May 1, 1984 with the possibility of receiving a higher crediting rate from May 1, 1984.

Appellants intervened in these proceedings and filed a motion to amend the Plan. Appellants challenged: (1) the parts of the Plan which continued the July 13 injunction of actions against the insurance subsidiaries in any other forum and provided that no judgment obtained elsewhere would be paid until the rehabilitation ended and all policyholder claims had been satisfied; (2) the part of the Plan which subordinated all claims against the assets to the claims of the policyholders; and (3) the part of the Plan which proposed certain rates of interest for some of the options available to holders of single premium deferred annuities. The court held hearings concerning the proposed Plan and various motions to amend, and on March 23, 1984, the court approved the Plan of Rehabilitation substantially as proposed and denied appellants' motion to amend.

In addition to its ruling on the Plan, the court made three rulings concerning its purported power over all controversies relating to the insurance companies. First, the court found that it had exclusive jurisdiction to adjudicate all claims involving the property of the insurance subsidiaries:

> [T]he Court has exclusive jurisdiction of the [subsidiaries] and the assets of the [subsidiaries] and has exclusive jurisdiction with respect to the administration of the assets of the [subsidiaries] to determine the validity or invalidity of all claims against such assets.

Second, the court continued the injunction originally entered in its July 13 Rehabilitation Order:

> The injunctions issued by the Court on July 13, 1983 are hereby reaffirmed the same being reasonable and necessary to protect the jurisdiction of the Court . . . and all persons or other entities are hereby enjoined from the commencement, prosecution, or further prosecution of any suit, action, claim or proceedings against the [subsidiaries] and their assets or the Receiver other than in this Court except to the extent, if any, this Court grants it permission to do so upon written Orders entered hereafter upon good cause shown.

Finally, the court announced it would not recognize any judgment affecting the Arkansas insurance companies from any other court:

> No sale, assignment, transfer, hypothecation, lien, security interest, judgment, order, attachment, garnishment or other legal process of any kind or nature with respect to or affecting these [insurance companies] or their assets or the Receiver shall be effective or enforceable unless entered in this Court in accordance with [the injunction provision quoted above].

I.

Appellants claim that, beginning in 1981, they gave their Arkansas insurance subsidiaries cash, securities, and other assets for less than fair consideration. Appellants believe that they may be entitled to set aside these

transfers as fraudulent conveyances and preferential transfers under Bankruptcy Code §§ 544, 547, and 548. Although the record is silent as to the size or exact nature of their claims, appellants assert on appeal that the transfers could amount to hundreds of millions of dollars. Appellants have not presented any other claims other than those they claim might arise under the bankruptcy act.

Appellants contend that the circuit court erred in making a series of rulings concerning its purported jurisdiction which prevent appellants from presenting their fraudulent conveyance and preferential transfer claims in any forum other than the rehabilitation court. By these rulings appellants are enjoined both from bringing their claims in bankruptcy court and from petitioning the bankruptcy court to determine whether certain assets should be included in the bankruptcy estate. The bankruptcy court is also enjoined from attempting to exercise jurisdiction over assets which appellants assert might be determined to be part of appellants' bankruptcy estate. Appellants claim that Congress has given them the right to bring their claims in federal bankruptcy court and that the state court cannot impair that right. Appellants contend the central issue is whether the court can deny appellants their right to present their claims in a federal forum.

Arkansas has enacted a comprehensive statutory scheme dealing with impaired insurance companies. This scheme is designed to protect the interests of policyholders and to provide for the adjustment of the right of creditors and policyholders in the event of insolvency. This scheme expressly authorizes the issuance of injunctions. Ark. Stat. Ann. § 66-4804 (Repl. 1980) provides:

> The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the Commissioner or the proceeding, or

> waste of the assets of the insurer, or the commencement of prosecution of any actions . . . .

The injunction issued by the rehabilitation court does not exceed the court's statutory authority, nor do appellants so contend.

Appellants argue a Congressionally mandated right to pursue their claims in federal bankruptcy court. It is of prime significance, however, that insurance companies are not eligible to be debtors in bankruptcy. 11 U.S.C. § 109 (b) (2) and (d). Congress has thus decided that rehabilitation and liquidation of insurance companies should be left to the several states. By exempting state insurance liquidation and rehabilitation proceedings, Congress prevented bankruptcy courts from interfering with the rights of insureds protected by state regulations. See *In Re Equity Funding Corporation of America*, 396 F. Supp. 1266, 1275 (C.D. Cal. 1975).

Of even greater significance is the fact that Congress has expressly left the regulation of insurance to the states by its passage of the McCarran-Ferguson Act, 15 U.S.C. 1011 *et seq.* This act provides in pertinent part:

> The Congress hereby declares that the continued regulation and taxation by the several states of the business of insurance is in the public interest, and that silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several states.
>
> * * * *
>
> No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any state for the business of insurance . . . unless such Act specifically relates to the business of insurance.

The purpose of the McCarran-Ferguson Act was to preserve intact from any federal intrusion, existing and future state regulation of the insurance industry subject

only to the exceptions expressly provided. *Prudential v. Benjamin*, 328 U.S. 408, 420-30 (1946). The McCarran-Ferguson Act does not purport to make the states supreme in regulating all activities of insurance companies. Insurance companies may do many things which are subject to federal regulation, but when they are engaged in the business of insurance, the Act applies. *S.E.C. v. National Securities*, 393 U.S. 453, 459-60 (1969). When a state does act to regulate the insurance business, particularly in respect to the rights of policyholders, it is free from the intervention of Congress in the absence of a specific law concerning that matter.

Appellants assert that state rehabilitation proceedings are not business of insurance within the meaning of the McCarran-Ferguson Act. The focus of "business of insurance" is the relationship between the insurer and an insured, particularly the policy's reliability. Statutes aimed at protecting or regulating the relationship between an insurance company and a policyholder, directly or indirectly, are laws regulating the business of insurance. *S.E.C. v. National Securities*, at 460. The Plan of Rehabilitation protects over 300,000 policyholders throughout the United States by attempting to provide the Arkansas insurance companies with assets at least sufficient to support the full amount of the accumulated value of the annuities. Ark. Stat. Ann. § 66-4810 (Repl. 1980) provides that the order to rehabilitate a domestic insurer shall direct that the Commissioner take possession of the company's property and "conduct the business." The Arkansas statute which authorizes the rehabilitation court to issue an injunction is a law enacted for "the business of insurance" within the meaning of the McCarran-Ferguson Act. Ark. Stat. Ann. § 66-4804 (Repl. 1980).

The McCarran-Ferguson Act prohibits Congress from impairing any law enacted by a state for the business of insurance unless such congressional action specifically re-

lates to the business of insurance. Therefore, since the Bankruptcy Act does not specifically relate to the business of insurance, and indeed expressly excludes insurance companies from being debtors in bankruptcy, appellants cannot pursue their claims under the Bankruptcy Act once enjoined by a valid state injunction. If any meaning is to be given to the congressional exclusion of insurance companies from the Bankruptcy Act and the mandate of the McCarran-Ferguson Act, it must be that the determination of rights among an insurance company's creditors must be left to state proceedings.

We do not hold that the McCarran-Ferguson Act prohibits a person from making a claim in Bankruptcy against an insurance company under any circumstances. In this instance, however, an insurance company is being rehabilitated pursuant to a state statutory scheme, and the rehabilitation court found it necessary to enjoin other proceedings in order to secure an orderly rehabilitation. Therefore, the McCarran-Ferguson Act prevents the Bankruptcy Act from being used to invalidate or impair the Arkansas statutes. The appellants do not have an absolute right to pursue their claims in bankruptcy court.

The rehabilitation of these three insurance companies is of vital state concern. On July 13, 1983, the appellants joined in appellee's petition to seek an Order of Rehabilitation. The parties joined in this effort in order to protect the interests of the companies' assets, the companies' creditors, the policyholders, and the public at large. The over 300,000 policyholders affected by the rehabilitation and the appellants' bankruptcy proceedings are at a distinct economic disadvantage in the protection of their interests. An orderly rehabilitation of the three insurance companies may provide the policyholders the only opportunity to recover their investments. The rehabilitation court needs to be able to subject the companies and those asserting claims to a coherent and compulsive legal

process, or it would be severely constrained in its efforts. The rehabilitation court's injunction does not leave the appellants without remedies. They may petition the court for relief from the injunction or litigate their claims in rehabilitation court. The trial court did not err in finding that in order to secure an economical, efficient, and orderly rehabilitation, it was essential not only that title and custody to the insurance companies' assets be entrusted to a single court, but that all claims to those assets be adjudicated in that same court.

II.

Appellants' final argument is that the approved Plan of Rehabilitation is contrary to law and is not fair or equitable to the extent it will compensate policyholders far beyond what they would have received had the subsidiaries never encountered financial difficulties.

The Rehabilitation Plan offers policyholders several options with respect to their policies. Options A and B offer policyholders a crediting rate of the average of first year crediting rates offered by other insurers on comparable policies plus .5%. The .5% bonus is to provide compensation to policyholders for the difficulties encountered in the rehabilitation process. The court denied appellants' motion to amend the Plan to base the crediting rate on the average rate offered by other issuers which are not in their first year guaranteed period plus .5%.

Appellants assert that first year rates guaranteed during the first year are artificially high to induce sales. After the guaranteed period, these high rates are reduced significantly to reflect true market conditions. Appellants assert that unless the court's order is reversed the policyholders will receive a perpetual first year guaranteed rate throughout rehabilitation.

The court found the Plan "is fair, just, and equitable to all interested persons, creditors, claimants, and enti-

ties affected by the Plan." The standard of review is whether the trial court's finding is clearly erroneous. ARCP Rule 52.

The policies sold by the appellants' insurance companies had a one year minimum crediting rate that was substantially higher than the interest rate guaranteed in subsequent years. However, significant reduction in the rate would have allowed the policyholders to surrender their policies and receive their full policy accumulation, plus the high first year rates. The policyholders could then obtain a new first year rate from another insurance company. The record reflects that appellants' companies would have had to maintain high crediting rates to keep their business. Under the Plan of Rehabilitation the policyholders are locked in and cannot reinvest with another company. The Rehabilitation Plan's crediting rates have a reasonable basis, and the adoption of the rates is not clearly erroneous.

Affirmed.

APPENDIX B

IN THE CIRCUIT COURT
OF PULASKI COUNTY, ARKANSAS
SECOND DIVISION

No. 83-5017
(Consolidated)

IN THE MATTER OF THE REHABILITATION OF NATIONAL INVESTORS PENSION INSURANCE COMPANY, NATIONAL INVESTORS LIFE INSURANCE COMPANY and MT. HOOD PENSION INSURANCE COMPANY

LINDA GARNER, INSURANCE COMMISSIONER FOR THE STATE OF ARKANSAS and REHABILITATOR,
Petitioner

vs.

NATIONAL INVESTORS PENSION INSURANCE COMPANY, NATIONAL INVESTORS LIFE INSURANCE COMPANY and MT. HOOD PENSION INSURANCE COMPANY,
Respondents

[Filed Mar. 23, 1984]

ORDER ADOPTING PLAN OF REHABILITATION

The Court has considered the Plan of Rehabilitation proposed by Linda Garner, Insurance Commissioner and Rehabilitator, in the above-styled and numbered cause (the "Plan") along with objections thereto and other related motions and matters respecting the above-named insurance companies (the "Companies"). The matter

having come on for hearing before the Court from January 9, 1984 to January 13, 1984, the Court having carefully considered the Plan, the applicable law, the evidence, comments, suggestions, objections thereto and testimony adduced during the said hearing along with the motions, arguments and briefs submitted, the Court finds as follows:

* * * *

3. That the Court has exclusive jurisdiction of the Companies and the assets of the Companies and has exclusive jurisdiction with respect to the administration of the assets of the Companies to determine the validity or invalidity of all claims against such assets. The Court has continuing jurisdiction with respect to this matter. All assets of the Companies, including, but not limited to, those existing on July 13, 1983 or acquired thereafter and including, but not limited to, those described in Attachment No. 1 to this Order, should be ordered to be subject to the provisions of the Plan as hereinafter set forth and/or hereafter amended or modified (in accordance with the procedures provided herein below), dedicated thereto and pooled in accordance with the provisions thereof. Further, the Rehabilitator should be appointed as Receiver and directed to rehabilitate the Companies in accordance with the Plan. Title to all assets of the Companies should be vested in the Receiver and the Receiver should be authorized to deal with same in her own name as Receiver . . . .

* * * *

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

* * * *

K. The injunctions issued by the Court on July 13, 1983 are hereby reaffirmed the same being reasonable and necessary to protect the jurisdiction of this Court, and the Plan and to enable the Court to conduct these proceedings pursuant to the statutory provisions for such proceedings, and all persons or other entities are hereby

enjoined from the commencement, prosecution, or further prosecution of any suit, action, claim or proceedings against the Companies and their assets or the Receiver other than in this Court except to the extent, if any, this Court grants its permission to do so by written Orders entered hereafter upon written motion and upon good cause shown. No sale, assignment, transfer, hypothecation, lien, security interest, judgment, order, attachment, garnishment or other legal process of any kind or nature with respect to or affecting these Companies or their assets or the Receiver shall be effective or enforceable unless entered in this Court in accordance with this paragraph.

* * * *

IT IS SO ORDERED this 23rd day of March, 1984.

/s/ Perry V. Whitmore
Circuit Judge

IN THE CIRCUIT COURT
OF PULASKI COUNTY, ARKANSAS
SECOND DIVISION

No. 83-5017
(Consolidated)

IN THE MATTER OF THE REHABILITATION OF NATIONAL INVESTORS PENSION INSURANCE COMPANY, NATIONAL INVESTORS LIFE INSURANCE COMPANY and MT. HOOD PENSION INSURANCE COMPANY

LINDA GARNER, INSURANCE COMMISSIONER FOR THE STATE OF ARKANSAS and REHABILITATOR,
Petitioner

vs.

NATIONAL INVESTORS PENSION INSURANCE COMPANY, NATIONAL INVESTORS LIFE INSURANCE COMPANY and MT. HOOD PENSION INSURANCE COMPANY,
Respondents

PROPOSED PLAN OF REHABILITATION FOR NATIONAL INVESTORS PENSION INSURANCE COMPANY NATIONAL INVESTORS LIFE INSURANCE COMPANY MT. HOOD PENSION INSURANCE COMPANY ("ARKANSAS COMPANIES") NATIONAL EQUITY LIFE INSURANCE COMPANY, INC. S&H LIFE INSURANCE COMPANY UNIVERSITY LIFE INSURANCE COMPANY OF AMERICA ("INDIANA COMPANIES")

(Corrected Copy of All Supplements Filed Through January 5, 1984)

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* * * *

Attachment Number 2 to Court Order dated March 23, 1984.

* * * *

C. Injunction Against Litigation and Claims

5.6 The Rehabilitation Courts have entered Orders enjoining the commencement, prosecution, or further prosecution of substantially all material suits, actions or proceedings against the Companies or the Rehabilitators, except as a part of the rehabilitation proceedings or with the permission of the respective Rehabilitation Court to institute or prosecute such suit, action, or proceeding elsewhere. The Arkansas Rehabilitation Court's injunction was contained in the Orders of Rehabilitation entered on July 13, 1983. The Indiana Rehabilitation Court's injunctive Order was entered on July 14, 1983.

5.7 The Rehabilitation Courts' injunctions should continue in all respects for the Term of the Plan. . . .

* * * *

APPENDIX C

IN THE CIRCUIT COURT
OF PULASKI COUNTY, ARKANSAS

No. 83-5018

IN the MATTER of the REHABILITATION of THE NATIONAL INVESTORS LIFE INSURANCE COMPANY

LINDA N. GARNER, INSURANCE COMMISSIONER for the STATE OF ARKANSAS
Petitioner

vs.

THE NATIONAL INVESTORS LIFE INSURANCE COMPANY
Respondent

ORDER OF REHABILITATION

* * * *

6. An injunction should be and is hereby issued restraining all persons and other legal entities, except the Commissioner, from: transacting the business of Respondent herein except as directed by the Commissioner, or from the waste or disposition of Respondent assets and property, real or personal, of every kind or nature; the payment of any sums to any parties by or on behalf of Respondent, except as authorized by the Commissioner pursuant to the provisions of paragraph 5 hereof; interfering with the Commissioner in the conduct of the business of Respondent and of all matters which are the subject of this proceeding; the making of claims or the commencement of or further prosecution of any actions in law or equity or administrative except in this Court; the obtaining of any preferences, judgment, attachments

or other liens against any of the property, personal or real, of the Respondent; commencing or continuing any action in the nature of an attachment, garnishment or execution against any of the property, personal or real, of Respondent; the making of any levy, garnishment or execution against any of the property, personal or real, of Respondent or its assets or its policyholders; making of any sale or deed for non-payment of taxes or assessments that would lessen the assets of the Respondent or the value thereof; withholding from the Commissioner or removing or destroying any of the books, accounts, documents, computer data, software or hardware, or other records related to the business, assets or affairs of the Respondent; or removing any assets of the Respondent from this State or from the various places of business or record repositories of Respondent wherever located, (except in conformity with the written instructions of the Commissioner), all pending further orders of this Court.

* * * *

IT IS SO ORDERED this 13th day of July, 1983.

/s/ Perry V. Whitmore
Circuit Judge

APPROVED AS TO FORM
AND SUBSTANCE:

/s/ William C. Bethea
WILLIAM C. BETHEA
Deputy Arkansas Insurance Commissioner
For the Commissioner

/s/ Walter W. Davidson
WALTER W. DAVIDSON
For the Respondent

APPENDIX D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Consolidated Case No. 1-83-02495

Chapter 11

(Judge Newsome) Bankruptcy Judge

IN RE: BALDWIN-UNITED CORPORATION, D. H. BALDWIN COMPANY and BALDWIN-UNITED LEASING COMPANY,
Debtors and Debtors-In-Possession

ORDER RE REHABILITATION PROCEEDINGS

At Cincinnati, in said District, on December —, 1983.

National Investors Life Insurance Company, National Investors Pension Insurance Company and Mt. Hood Pension Insurance Company, all of which are affiliates of Baldwin-United Corporation ("Baldwin") and D. H. Baldwin Company ("DHB"), debtors and debtors-in-possession herein, are presently in proceedings in the Circuit Court of Pulaski County, Arkansas for rehabilitation (the "Arkansas Proceedings"). National Equity Life Insurance Company, Inc., S&H Life Insurance Company and University Life Insurance Company of America, all of which are affiliates of Baldwin and DHB, are presently in proceedings in the Circuit Court of Marion County, Indiana for rehabilitation (the "Indiana Proceedings").

The rehabilitators in the Arkansas and Indiana Proceedings have proposed a Plan of Rehabilitation. Sections

5.14 and 5.15 of the proposed plan purport to subordinate claims of Baldwin and DHB to the claims of policyholders. Baldwin, DHB and other affiliated companies may have claims against the insurance companies involved in the Arkansas and Indiana Proceedings. While Baldwin and DHB presently believe that a successful rehabilitation of those companies is in the best interest of the debtor estates, there is no assurance that a Plan of Rehabilitation will be approved on proper terms and, if approved, ultimately result in the return of those companies to Baldwin and its related entities.

Baldwin and DHB have initiated discussions with the rehabilitators with a view toward entering into an agreement that protects Baldwin's and DHB's rights against the companies involved in the Arkansas and Indiana Proceedings, while at the same time permitting the rehabilitations to proceed. To date, no agreement has been reached and comments on the proposed plan must be filed on or before December 19, 1983. As a result, at the December 14, 1983 Status Conference, counsel for Baldwin and DHB orally asked this Court for an order authorizing the debtors to take whatever actions they deem necessary in connection with the Arkansas and Indiana Proceedings to protect the interests of the debtor estates.

Based upon the foregoing, and good cause appearing therefore, it is hereby ORDERED, ADJUDGED and DECREED:

That Baldwin and DHB be, and they hereby are, authorized to appear and/or intervene in the Arkansas and Indiana Proceedings and to take whatever actions they deem necessary and appropriate to protect the interests of the debtor estates. No such appearance or intervention shall be deemed to constitute a waiver of any claim or defense Baldwin or DHB may have in this Court with respect to any of the insurance companies involved in those proceedings or a waiver of the jurisdiction of

this Court to determine any claims between Baldwin and DHB and the companies involved in the Arkansas and Indiana Proceedings.

/s/ Randall J. Newsome
RANDALL J. NEWSOME
Bankruptcy Judge

(Entered December 14, 1983)

APPENDIX E

SETTLEMENT AGREEMENT

[certain confidential information has been expunged]

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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of January 4, 1985, by and between LINDA N. GARNER ("Garner"), as Rehabilitator and Receiver of National Investors Life Insurance Company, National Investors Pension Insurance Company and Mt. Hood Pension Insurance Company (collectively, the "Arkansas Companies"), and not in her individual capacity, DON H. MILLER ("Miller" and, together with Garner, the "Rehabilitators"), as Rehabilitator of National Equity Life Insurance Company, Inc., S & H Life Insurance Company and University Life Insurance Company of America (collectively, the "Indiana Companies"), and not in his individual capacity, BALDWIN-UNITED CORPORATION, a Delaware corporation ("Baldwin-United"), and D.H. BALDWIN COMPANY, an Ohio corporation and a wholly owned subsidiary of Baldwin-United ("D.H. Baldwin" and, together with Baldwin-United and with any successor to D.H. Baldwin and to Baldwin-United, the "Baldwin Companies").

WITNESSETH:

WHEREAS, Baldwin-United and D.H. Baldwin are debtors in possession in Consolidated Case No. 1-83-02495 pending before the United States Bankruptcy Court for the Southern District of Ohio, Western Division (the "Bankruptcy Court" and the "Bankruptcy Case"); and

WHEREAS, the Arkansas Companies are presently in proceedings for rehabilitation in that certain action styled *In the matter of the Rehabilitation of National Investors Pension Insurance Company, National Investors Life Insurance Company and Mt. Hood Pension Insurance Company, Linda Garner, Insurance Commissioner for the State of Arkansas and Rehabilitator v. National Investors Pension Insurance Company, National Investors Life Insurance Company, and Mt. Hood Pension Insurance Company,* Case No. 83-5017 (the "Arkansas Rehabilitation

Proceeding") pending before the Circuit Court of Pulaski County, Arkansas (the "Arkansas Court"); and the Indiana Companies are presently in proceedings for rehabilitation in that certain action styled *Don H. Miller, as the Insurance Commissioner of the Department of Insurance of the State of Indiana v. National Equity Life Insurance Company, Inc., S & H Life Insurance Company and University Life Insurance Company of America*, Case No. C83-1664 (the "Indiana Rehabilitation Proceeding") pending before the Marion Circuit Court, State of Indiana (the "Indiana Court"); and

WHEREAS, the Rehabilitators and the Baldwin Companies desire (i) to settle all claims the Rehabilitators have asserted or may assert against the Baldwin Companies and their subsidiaries and affiliates and all claims the Baldwin Companies have asserted or may assert against the Rehabilitators, the Arkansas Companies and the Indiana Companies; and (ii) to facilitate the rehabilitation of the Arkansas Companies and the Indiana Companies and the reorganization of the Baldwin Companies.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the Rehabilitators and the Baldwin Companies agree as follows:

ARTICLE I

DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

1.1 *"Adjusted Base Payment"* means the aggregate of the Base Payment as increased and/or decreased by the following required adjustments:

(i) The Base Payment shall be increased by an amount equal to 50% of the amount, if any, by which the Net Proceeds from the sale of Empire

or Baldwin Enterprises, Inc., exceed $65,000,000. The Base Payment shall be decreased by an amount equal to 50% of the amount, if any, by which $65,000,000 exceeds the Net Proceeds from the sale of Empire or Baldwin Enterprises, Inc.;

* * * *

(iv) In the event the Proceeds from the sale of MGIC Assets exceed $875,000,000 but are less than or equal to $1,056,750,000, the Base Payment shall be increased by an amount equal to 60% of the amount by which the Proceeds from the sale of MGIC Assets exceed $875,000,000. In the event the Proceeds from the sale of MGIC Assets exceed $1,056,750,000, the Base Payment shall be increased by an amount equal to $109,050,000 plus 80% of the amount by which such Proceeds exceed $1,056,750,000. The Base Payment shall be decreased by an amount equal to 60% of the amount, if any, by which $875,000,000 exceeds the Proceeds from the sale of MGIC Assets. The parties further agree that the amounts paid, if any, to the Balunit Banks or the banks who are lenders in connection with the "MGIC revolver," regardless of when paid, shall not be deducted from the Proceeds from the sale of the MGIC Assets in calculating the amounts due pursuant to the provisions of this subparagraph (iv) or in calculating the Adjusted Base Payment or the Minimum Payment, subject, however, to the provisions of subparagraph (v) and Section 3.5 below;

* * * *

(vi) The Base Payment shall be increased by the amount of investment income allocable thereto as determined by Section 3.7 hereof.

1.2 *"Affiliate Assets"* means the assets in the possession of the Arkansas Companies and the Indiana Companies listed on Exhibit A hereto.

1.3 *"Baldwin Consolidated Group"* means the Baldwin Companies and those subsidiaries and affiliates that are or have been consolidated with the Baldwin Companies in the consolidated income tax returns filed by the Baldwin Companies with the Service.

* * * *

1.6 *"Bankruptcy Code"* means Title 11 of the United States Code.

1.7 *"Base Payment"* means the amount of $170,000,000.

1.8 *"Brokers"* means the brokers, dealers and other entities that directly or indirectly sold single premium deferred annuity policies issued or reinsured by the Arkansas Companies or the Indiana Companies.

1.9 *"Closing Date"* has the meaning set forth in Section 3.2 hereof.

1.10 *"Disclosure Statement"* means the statement or statements required to be filed with and approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code.

1.11 *"Empire"* means The Empire Savings, Building & Loan Association of Denver, Colorado, a subsidiary of the Baldwin Companies, and its assets and subsidiaries.

1.12 *"Federal Tax Payment"* means the aggregate amount of the payment or payments, net of re-

funds received and refunds credited or applied against deficiencies, made to the Service in satisfaction and settlement of the Tax Liabilities for all taxable years through the year ended December 31, 1984.

1.13 *"Minimum Payment"* means an amount equal to the greater of (i) $145,000,000 decreased by an amount equal to

or (ii) $120,000,000.

1.14 *"MGIC Assets"* means all the assets of MGIC Investment Corporation, a Wisconsin corporation, and its subsidiaries, but excluding those assets listed in Exhibit B hereto.

1.15 *"Net Proceeds"* means Proceeds net of all valid liens, encumbrances or other claims (but not liens, encumbrances or other claims of creditors of the Baldwin Companies) against the entities or assets being sold which are required to be paid prior to the distribution of such Proceeds to the Rehabilitators and/or the Baldwin Companies.

1.16 *"Non-Affiliate Assets"* means all assets of the Arkansas Companies and the Indiana Companies other than the Affiliate Assets.

1.17 *"Proceeds"* means the aggregate cash and other proceeds of the sale of: (i) Baldwin Enterprises, Inc. or Empire or their assets, and/or (ii) the MGIC Assets, and/or (iii) Foremost-Baldwin Partners, and/or (iv) any of the Affiliate Assets (whether heretofore or hereafter sold), as required by the context, net of customary closing costs, fees and commissions, including, but not limited to, legal and accounting fees and disbursements, fees of brokers, finders and investment bankers, and all state and local taxes and transfer fees.

* * * *

1.19 *"Reorganization Plan"* means any plan and all plans of reorganization for the Baldwin Companies filed in the Bankruptcy Court pursuant to Sections 1121 *et seq.* of the Bankruptcy Code.

1.20 *"Service"* means the United States Internal Revenue Service and/or the United States Department of the Treasury.

1.21 *"SPDA Enhancement Plan"* means any plan or plans as may be developed and implemented to facilitate the Arkansas Rehabilitation Proceeding and the Indiana Rehabilitation Proceeding, which may include the assigment, pledge, or other transfer in whole or in part of legal or beneficial title to the Non-Affiliate Assets to The Metropolitan Life Insurance Company or another entity or entities, and pursuant to which the rights of SPDA Policyholders are enhanced.

1.22 *"SPDA Policyholders"* means the holders of single premium deferred annuity policies and other policies issued or reinsured by any of the Arkansas Companies or the Indiana Companies.

1.23 *"Special Accounts"* has the meaning set forth in Section 3.6 hereof.

1.24 *"State Guaranty Funds"* means those instrumentalities of state governments that have or may have obligations to pay or guarantee payments to SPDA Policyholders.

1.25 *"Tax Liabilities"* means all unpaid federal income tax liabilities, as computed through the date of payment, of (a) the Baldwin Consolidated Group, as presently or previously constituted, for all taxable periods and (b) all direct or indirect current or former subsidiaries and affiliates, including but not limited to the SPDA Group, of the Baldwin Companies, or either of them, for all taxable periods for

which such subsidiaries or affiliates were not includable in the Baldwin Consolidated Group, as presently or previously constituted, *provided, however,* that unpaid income tax liabilities (and associated interest and penalties) of former subsidiaries and affiliates for such taxable periods shall be disregarded if and to the extent that the Baldwin Companies (and their current subsidiaries and affiliates, including but not limited to the SPDA Group, as of the date hereof) have no liability for, or are not chargeable in respect of, such unpaid federal income tax liabilities (and associated interest and penalties).

ARTICLE II

SPDA ENHANCEMENT PLAN

2.1 *Enhancement Plan Facilitation.* Subject to the provisions of Section 2.3 hereof, and in order to facilitate the development and implementation of an SPDA Enhancement Plan:

(a) *Non-Affiliate Assets.* The Baldwin Companies do hereby assign and release, in favor of the Rehabilitators, their successors and assigns, any and all right, title and interest they or their subsidiaries have in and to the Non-Affiliate Assets.

(b) *IRS Settlement.* With the cooperation of the Rehabilitators, the Baldwin Companies shall: (i) utilize their best efforts (x) to negotiate with the Service or to effect through litigation a reasonable settlement or other resolution of all Tax Liabilities through the taxable year ended December 31, 1984, and (y) to ensure that the Tax Liabilities shall not be satisfied from the Non-Affiliate Assets or asserted against the Rehabilitators, the Arkansas Companies or the Indiana Companies, or against any third party to whom the Non-Affiliate Assets or any portion thereof may hereafter be transferred by the

Rehabilitators; or, if the Baldwin Companies are unable to obtain a satisfactory resolution of the Tax Liabilities through the taxable year ended December 31, 1984, (ii) attempt to obtain an agreement from the Service or a judgment that all Tax Liabilities shall be satisfied from assets other than the Non-Affiliate Assets and that any transfer of the Non-Affiliate Assets shall not result in a claim for Tax Liabilities against the Rehabilitators, the Arkansas Companies or the Indiana Companies, or against any third party to whom the Non-Affiliate Assets or any portion thereof may hereafter be transferred by the Rehabilitators. In connection with the Baldwin Consolidated Group, (i) the Baldwin Companies shall have control over all negotiations with and any litigation against the Service and (ii) the Baldwin Companies shall have complete and final authority to settle and compromise or not to settle and compromise all Tax Liabilities with the Service. The Rehabilitators shall have the right to participate in the negotiations with or any litigation against the Service as necessary or appropriate in the discharge of their statutory duties and the Baldwin Companies shall keep the Rehabilitators advised of the status of all tax negotiations with the Service provided for in this Section 2.1(b).

(c) *Tax Consolidation.* The Rehabilitators shall not cause the deconsolidation of National Investors Pension Insurance Company, National Equity Life Insurance Company, Inc., S & H Life Insurance Company or Balunit, Inc. from the Baldwin Consolidated Group for federal income tax purposes until (if at all) the later of (i) the tax year following the tax year in which substantially all of the losses from the sale of the MGIC Assets are recognized or (ii) January 1, 1986. Consistent with their statutory duties, the Rehabilitators shall take all reasonable action necessary to ensure that all such companies remain

part of the Baldwin Consolidated Group during such periods. Without limiting the generality of the foregoing, the Rehabilitators, the Arkansas Companies and the Indiana Companies shall give any consents and shall execute, seal, file and deliver any documents, instruments, motions, notices or agreements reasonably deemed prudent or necessary by the Baldwin Companies to implement the purpose and intent of this Section 2.1(c). Notwithstanding the foregoing provisions of this Section 2.1(c) of any other provision of this Agreement, the Rehabilitators shall have and hereby retain the right to cause any of the Indiana Companies or the Arkansas Companies that do not insure or reinsure risks including life contingencies to assume such risks commencing no earlier than January 2, 1985; *provided, however,* that consistent with their statutory duties, the Rehabilitators shall nevertheless take all reasonable action necessary to ensure that Balunit, Inc. and B-U Acquisition Corporation remain consolidated for tax purposes with the Baldwin Companies until the later of the periods described in clauses (i) and (ii) of this Section 2.1(c).

(d) *SPDA Releases.* Any SPDA Enhancement Plan and any rehabilitation plan or plans relating to the Arkansas Companies or the Indiana Companies that incorporate an SPDA Enhancement Plan shall require (i) that the Brokers and State Guaranty Funds shall release the Baldwin Companies, their subsidiaries and their present directors and officers from claims and liabilities to the same extent that, and on terms no less favorable than, such Brokers or State Guaranty Funds receive releases from SPDA Policyholders or are otherwise released from liability, and (ii) that all SPDA Policyholders who elect to participate in such SPDA Enhancement Plan shall also release the Baldwin Companies, their subsidiaries and their present directors and officers

to the same extent that, and on terms no less favorable than, such SPDA Policyholders release Brokers or State Guaranty Funds. Such required releases in favor of the Baldwin Companies, their subsidiaries and their present directors and officers shall be provided to the Baldwin Companies forthwith upon the receipt of such releases by the Rehabilitators and/or the Indiana Court or the Arkansas Court.

2.2 *Tax Sharing Agreement.* The Baldwin Companies and the Rehabilitators shall negotiate and execute a tax sharing agreement. A copy of said tax sharing agreement shall be attached to this Agreement as Exhibit C on or before February 21, 1985. In the event that a tax sharing agreement has not been executed and attached by February 21, 1985, this Agreement in its entirety is terminable upon the giving of written notice pursuant to Section 4.6 by either the Rehabilitators or the Baldwin Companies.

2.3 *Court Approvals; Binding Agreement.* The agreements of the Baldwin Companies and the Rehabilitators set forth in this Article II are subject to and conditioned upon the entry of orders by each of the Arkansas Court, the Indiana Court and the Bankruptcy Court approving or authorizing this Agreement. The parties shall forthwith petition these courts for the entry of such orders. Upon the entry of all such orders, (i) the Baldwin Companies shall be bound by the terms and agreements set forth in Sections 2.1(a) and 2.1(b)(i)(x) regardless of whether an SPDA Enhancement Plan or a Reorganization Plan is approved or confirmed or whether Article III hereof is terminated because the Minimum Payment is not made or otherwise and, (ii) if there is an SPDA Enhancement Plan, the Baldwin Companies and the Rehabilitators shall be bound by all of the terms and agreements set forth in this Article II regardless of whether a Reorganization Plan is approved or confirmed or whether Article III hereof is terminated because the Minimum

Payment is not made or otherwise. In addition, the Baldwin Companies shall be bound by the terms and agreements set forth in Section 2.1(b)(i)(y) and 2.2 and the Rehabilitators shall be bound by the terms and agreements set forth in Sections 2.1(c) and 2.2 if Article III of this Agreement is not terminated and a Reorganization Plan is confirmed in which the claims in the Bankruptcy Case of the SPDA Policyholders, the State Guaranty Funds and the Brokers are disallowed or withdrawn, resulting in no payment by the Baldwin Companies with respect to such claims.

ARTICLE III

SETTLEMENT

3.1 *Filing of Reorganization Plan.* As soon as practicable following the entry of the orders contemplated in Section 2.3 hereof, the Baldwin Companies shall prepare and file a Reorganization Plan and Disclosure Statement that resolve the claims of the Rehabilitators, the objections and counterclaims of the Baldwin Companies and all disputes between the Baldwin Companies and the Rehabilitators, which Reorganization Plan shall be consistent with and shall incorporate the provisions of this Article III. The Reorganization Plan and Disclosure Statement shall provide for the entry of a confirmation order no later than January 15, 1986 and an effective date no later than 30 days after the date an order confirming such Reorganization Plan is entered, irrespective of any pending appeals of such order unless a stay has been entered.

3.2 *Transactions to be Effected on the Closing Date.* On a date which is as soon as practicable following the time when the last of the conditions set forth in Section 3.3 hereof shall have been fulfilled (or waived in writing) and, in any event, no later than forty-five (45) days following the date on which the last of such conditions has

been fulfilled or waived (such date is referred to herein as the "Closing Date"), the following simultaneous transactions shall occur:

(a) *The Payment of Adjusted Base Payment.* On the Closing Date, the Baldwin Companies shall pay (or cause to be paid) in immediately available funds to the Rehabilitators or their assignees, and the Rehabilitators or their assignees shall accept, the Adjusted Base Payment (or the Minimum Payment if the Baldwin Companies shall have elected, pursuant to Section 3.3(h) hereof, to pay the Minimum Payment even though the Adjusted Base Payment does not equal or exceed the Minimum Payment) in the form of a disbursement from one or more of the Special Accounts described in Section 3.6 hereof or, at the election of the Baldwin Companies, from other Baldwin Companies' accounts; *provided, however,* that in the event all of the conditions set forth in Section 3.3 hereof have been fulfilled other than the sale of Baldwin Enterprises, Inc. or Empire, the Baldwin Companies shall have the right pursuant to Section 3.3(d) hereof to pay (or cause to be paid) the Minimum Payment to the Rehabilitators or their assignees, and the Rehabilitators or their assignees shall be obligated to accept such Minimum Payment on the Closing Date and proceed with the transactions contemplated by this Section 3.2; and *provided further, however,* that the Baldwin Companies shall pay the balance, if any, of the Adjusted Base Payment within twenty (20) days after the date on which Baldwin Enterprises, Inc. or Empire is sold. For purposes of determining the Adjusted Base Payment in the event any of the Net Proceeds from the sale of MGIC assets, Empire or Baldwin Enterprises, Inc. and/or Foremost-Baldwin Partners are in the form of assets other than cash on the Closing Date, the Rehabilitators and the Baldwin Companies shall

negotiate in good faith to establish the fair market value of such assets as of that date.

(b) *Assignment of the Affiliate Assets.* On the Closing Date, the Rehabilitators, the Arkansas Companies and the Indiana Companies shall assign, sell, transfer, convey and release to the Baldwin Companies all right, title and interest of the Rehabilitators, the Arkansas Companies and the Indiana Companies in and to the Affiliate Assets or the proceeds thereof, including all right, title and interest in the excess of the Net Proceeds (plus investment income) above the sum of the Adjusted Base Payment and the amount allocable to the Rehabilitators pursuant to Section 3.2(d) hereof. Upon such assignment, sale, transfer, conveyance and release, the Rehabilitators shall supply orders of the Indiana Court and/or the Arkansas Court to the effect that the Affiliate Assets shall be free and clear of all liens, claims and encumbrances of the Rehabilitators, the Arkansas Companies and the Indiana Companies, or of those claiming through the Rehabilitators, and such release shall include a release from the Rehabilitators, the Arkansas Companies and the Indiana Companies of any claims or causes of action which they may have against or relating to all companies the common stock of which is listed on Exhibit A hereto and the direct and indirect subsidiaries of those companies (other than claims or causes of action against or relating to the MGIC Investment Corporation Debenture, the direct and indirect subsidiaries of National Equity Life Insurance Company, other than Foremost-Baldwin Partners, and the direct and indirect subsidiaries of University Life Insurance Company of America). Unless and until this Agreement is terminated pursuant to Section 3.8 hereof or otherwise, the Rehabilitators shall not cause or allow any

such company or subsidiary to be assigned, conveyed or otherwise transferred to any entity other than the Indiana Companies or the Arkansas Companies without the prior written consent and approval of the Baldwin Companies. In the event the Rehabilitators assign, sell, transfer or otherwise dispose of any of the Affiliate Assets, or any interest (except for the MGIC Investment Corporation Debenture) in the companies the common stock of which is listed on Exhibit A hereto or the direct and indirect subsidiaries of those companies (except for the direct and indirect subsidiaries of National Equity Life Insurance Company, other than Foremost-Baldwin Partners, and the direct and indirect subsidiaries of University Life Insurance Company of America) to an entity other than the Indiana Companies or the Arkansas Companies, they shall deposit the Proceeds or Net Proceeds, as the case may be, in a Special Account pursuant to Section 3.6 hereof. On the Closing Date, the Rehabilitators, the Arkansas Companies and the Indiana Companies shall execute, seal, file and deliver any documents, stock powers, endorsements, assignments, instruments or other writings reasonably deemed prudent or necessary by the Baldwin Companies to effect the transactions contemplated by this Section 3.2(b).

(c) *Releases.* On the Closing Date, the Baldwin Companies and the Rehabilitators shall execute and exchange written releases in the form attached hereto as Exhibit D, releasing and waiving any and all claims and counterclaims which the Baldwin Companies, on the one hand, and the Rehabilitators, the Arkansas Companies and the Indiana Companies, on the other hand, may have against one another.

(d) *Proceeds of Foremost-Baldwin Partners.* On the Closing Date the Baldwin Companies and the Rehabilitators shall each receive fifty percent (50%)

of the Net Proceeds from the sale or other disposition of Foremost-Baldwin Partners together with fifty percent (50%) of any income from the investment of the Proceeds or Net Proceeds, as the case may be, of such sale or disposition.

(e) *Simultaneous Closing.* The respective obligations of the Rehabilitators and the Baldwin Companies to perform and consummate the transactions set forth in Section 3.2(a) through (d) above are conditioned upon the simultaneous occurrence of all such transactions.

3.3 *General Conditions.* The agreements, obligations and undertakings of the Baldwin Companies under Section 3.1 hereof are subject to the fulfillment of the conditions set forth in subsection 3.3(a) hereof only; the agreements, obligations and undertakings of the Rehabilitators and the Baldwin Companies under Section 3.2 hereof are subject to the fulfillment of all of the following conditions:

(a) *Court Approvals.* The Arkansas Court, the Indiana Court and the Bankruptcy Court shall all have entered orders approving and authorizing the terms of this Agreement;

(b) *Reorganization Plan Approval.* No later than January 15, 1986, the Bankruptcy Court shall have entered an order or orders confirming a Reorganization Plan pursuant to Section 1129 of the Bankruptcy Code, which Reorganization Plan shall include provisions consistent with and to the effect of Sections 3.1 and 3.2 hereof;

(c) *Sale of MGIC Assets.* All or substantially all of the MGIC Assets shall have been sold or otherwise converted to cash or other proceeds and paid to or otherwise distributed to Balunit, Inc., *provided, however,* that to the extent that an insubstantial portion

of such MGIC Assets have not been sold, the Rehabilitators and the Baldwin Companies may negotiate in good faith to determine the fair market value (on a liquidation or going concern basis, as appropriate) of such unsold assets for purposes of computing the Proceeds from the sale of MGIC Assets;

(d) *Sale of Empire.* Empire and its subsidiaries, or the assets thereof, shall have been sold (directly or through the sale of Baldwin Enterprises, Inc.) or otherwise converted to cash or other proceeds; *provided, however,* that in the event all of the other conditions set forth in this Section 3.3 have been fulfilled, the Baldwin Companies shall have the right upon not less than twenty (20) days prior written notice to the Rehabilitators to waive such condition by causing the Minimum Payment to be made to the Rehabilitators, as set forth in Section 3.2(a) hereof, and by undertaking in such written notice to cause the balance, if any, of the Adjusted Base Payment to be disbursed to the Rehabilitators from the Special Accounts set forth in Section 3.6 hereof within twenty (20) days after the date on which Empire or its assets (directly or through the sale of Baldwin Enterprises, Inc.) are sold;

(e) *Sale of Foremost-Baldwin Partners.* Foremost-Baldwin Partners, or the assets thereof, shall have been sold or otherwise converted to cash or other proceeds;

(f) *Settlement of Tax Liabilities.* The Baldwin Companies shall have entered into a settlement with the Service with respect to the Tax Liabilities or otherwise resolved the Tax Liabilities as contemplated by Section 2.1(b)(i) hereof;

(g) *Resolution of Balunit Banks' Claims.* All claims of the Balunit Banks against Balunit, Inc. and/or the MGIC Assets shall have been finally

resolved, whether pursuant to a final and binding settlement agreement with the Balunit Banks or pursuant to final and binding adjudication of such claims; and

(h) *Minimum Payment.* The Adjusted Base Payment shall equal or exceed the Minimum Payment or the Baldwin Companies shall have elected, in their sole discretion, to pay the Minimum Payment even though the Adjusted Base Payment does not equal or exceed the Minimum Payment.

3.4 *Cooperation.* Until the termination of this Agreement pursuant to Section 3.8 hereof or otherwise, the Rehabilitators and the Baldwin Companies shall cooperate in good faith and exercise their respective best efforts to achieve the satisfaction of the requirements and conditions contained in Sections 3.1 and 3.3 hereof and to effect the transactions set forth in Section 3.2 hereof. Without limiting the generality of the foregoing, the Rehabilitators and the Baldwin Companies, or all of them where appropriate, shall give any consents (and the Rehabilitators shall vote affirmatively for any Reorganization Plan which incorporates the provisions hereof) and shall execute, seal, file and deliver any documents, instruments or other writings reasonably deemed prudent or necessary to implement the provisions of this Agreement and shall take all such reasonable measures as may be prudent or necessary to secure at the earliest practicable date the approval and authorization of this Agreement and the transactions contemplated thereby by the Bankruptcy Court, the Arkansas Court and the Indiana Court and by any other required governmental authorities or regulatory agencies.

* * * *

3.6. *Special Accounts.* After the date of this Agreement, all Proceeds or Net Proceeds, as the case may be,

received prior to the Closing Date from the sale of the MGIC Assets, the sale of Baldwin Enterprises, Inc. or Empire or its assets, the sale of Foremost-Baldwin Partners or its assets, and from the sale of any other Affiliate Assets, regardless of whether any such Proceeds or Net Proceeds are received by the Baldwin Companies or any of their subsidiaries (including Balunit, Inc.) or by the Rehabilitators or the Arkansas Companies or the Indiana Companies, shall be subject to the provisions of this Section 3.6. All such Proceeds or Net Proceeds shall be deposited by the entity or entities receiving such Proceeds or Net Proceeds in a special, segregated income producing account with ———————— N.A., with a separate special account to be established for Proceeds or Net Proceeds arising from each of the MGIC Assets (when received by Balunit, Inc.), Baldwin Enterprises, Inc. or Empire or its assets, Foremost-Baldwin Partners or its assets, and the other Affiliate Assets (the "Special Accounts"). In elaboration, but not in limitation of the foregoing, the Rehabilitators and the Baldwin Companies shall cause any Proceeds or Net Proceeds from the sale of the MGIC Assets (when received by Balunit, Inc.) to be deposited by Balunit, Inc. in such a Special Account. No disbursements of principal or income shall be made prior to the Closing Date from any of the Special Accounts without the prior specific authorization of each such payment by the Rehabilitators, the Baldwin Companies, and the Bankruptcy Court; *provided, however,* that

> (i) funds in the Special Accounts may be invested at the direction of the Baldwin Companies in the following: (a) Certificates of Deposit insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, (b) Federal Government Repurchase Agreements, (c) Securities issued by the Federal Government (or agencies thereof), (d) Commercial Paper which carries

the highest rating by Standard and Poors and Moodys and (e) Money Market Funds the portfolios of which consist primarily of securities of the type described in (a), (b), (c) and (d) above; and

(ii) funds in the Special Account relating to MGIC Assets Proceeds may be disbursed to the Balunit Banks upon the final settlement or adjudication of their claims against Balunit, Inc.

On the Closing Date, if the conditions set forth in Section 3.3 hereof have been fulfilled, the disbursements called for by Sections 3.2(a) and 3.2(d) hereof shall be made from the Special Accounts. Concurrent with the payment of the Adjusted Base Payment and the payment provided by Section 3.2(d) hereof to the Rehabilitators, all remaining funds in such Special Accounts shall be distributed to the Baldwin Companies or their designees.

3.7 *Allocation of Investment Income.* All Proceeds or Net Proceeds in the Special Accounts shall be invested as permitted by clause (i) of Section 3.6 hereof from the date such Proceeds or Net Proceeds are received until the date of payment to the Rehabilitators of the Adjusted Base Payment (in the case of Proceeds or Net Proceeds attributable to the MGIC Assets, Baldwin Enterprises, Inc. or Empire and other Affiliate Assets) or until the payments to the Rehabilitators and the Baldwin Companies pursuant to Section 3.2(d) hereof (in the case of Proceeds or Net Proceeds attributable to Foremost-Baldwin Partners). The Adjusted Base Payment shall be increased by an amount equal to the product of the total income earned from investing the Proceeds or Net Proceeds, excluding those Proceeds or Net Proceeds attributable to Foremost-Baldwin Partners, from the date or dates such Proceeds or Net Proceeds are deposited in the Special Accounts until the date (giving effect to any payment from such Special Accounts of the Minimum Payment pursuant to Sections 3.2(a), 3.3(d), or 3.3(h) hereof)

the Adjusted Base Payment is made to the Rehabilitators *multiplied by* a fraction, the denominator of which is the total of such Net Proceeds (excluding those Net Proceeds attributable to Foremost-Baldwin Partners) and the numerator of which is the Adjusted Base Payment (prior to adjustment thereof pursuant to this Section 3.7).

3.8 *Termination.* Anything herein to the contrary notwithstanding, the provisions of this Article III may be terminated at any time before the Closing Date by the Baldwin Companies or the Rehabilitators upon written notice if the Bankruptcy Court has not entered an order confirming a Reorganization Plan on or before January 15, 1986, which Reorganization Plan shall include provisions consistent with and to the effect of Sections 3.1 and 3.2 hereof or if any of the other conditions set forth in Section 3.3 hereof shall not have been met by July 13, 1986, or thirty (30) days after the date on which the Balunit Amount is finally determined, whichever is later; and, in the event of such termination, all provisions of this Article III (except the provisions of Section 3.6 hereof relating to maintaining the Special Accounts) shall terminate and shall be of no further force or effect. In the event of such termination, all Net Proceeds shall be held in the Special Accounts established pursuant to Section 3.6 hereof pending resolution of the claims of the respective parties hereto to such Net Proceeds.

3.9 *No Distributions.* From and after the date of this Agreement, until and including the Closing Date or the date of termination hereof, in the event that the Baldwin Companies sell or otherwise dispose of any of their subsidiaries or assets other than the Affiliate Assets, the Baldwin Companies shall not distribute to their creditors the proceeds of any such sale or disposition occurring during such period.

ARTICLE IV

MISCELLANEOUS

4.1 *Good Faith and Fair Dealing.* The Rehabilitators and the Baldwin Companies shall exercise good faith and fair dealing in the performance of this Agreement.

4.2 *Due Authorization by Baldwin Companies.* Subject to the approvals of the Bankruptcy Court, the Indiana Court and the Arkansas Court, approval by the Board of Directors of Baldwin-United and the Executive Committee of D.H. Baldwin and (with respect to Article III hereof) confirmation of a Reorganization Plan, the Baldwin Companies represent and warrant that they are authorized to enter into this Agreement and that there are no outstanding commitments, agreements or understandings, expressed or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by them under this Agreement.

4.3 *Due Authorization by the Rehabilitators.* Subject to the approvals of the Bankruptcy Court, the Indiana Court and the Arkansas Court, and (with respect to Article III hereof) confirmation of a Reorganization Plan, the Rehabilitators represent and warrant that they are authorized to enter into this Agreement and that there are no outstanding commitments, agreements or understandings, expressed or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by them under this Agreement.

4.4 *Entire Agreement.* This Agreement sets forth the entire agreement and understanding among the parties hereto relating to the subject matter hereof and supersedes all prior discussions and documents. No party hereto shall be bound by any terms, conditions, definitions, warranties, understandings or representations with respect to the subject matter hereof other than as expressly provided for

herein except as may hereafter be agreed in a writing signed by the parties hereto.

4.5 *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and the Arkansas Companies and the Indiana Companies and to all parties' respective successors and assigns, including any trustee appointed in the Bankruptcy Case or any subsequent case under Chapter 7 of the Bankruptcy Code.

4.6 *Notice.* Any notice or other communication required or desired to be given hereunder shall be deemed to be given to the addressee when received and shall be sent by registered mail, postage pre-paid, return receipt requested, or by hand delivery, to each of the parties hereto at the address listed below, unless such address shall have been changed by notice in writing:

If to Miller:

Don H. Miller
Insurance Commissioner
Indiana Insurance Department
509 State Office Building
Indianapolis, Indiana 45204

Copy To:

Charles W. Havens III, Esq.
LeBoeuf, Lamb, Leiby & MacRae
1333 New Hampshire Ave., N.W.
Washington, D.C. 20036

If to Garner:

Linda N. Garner
Insurance Commissioner
Arkansas Insurance Department
400-18 University Tower Building
Little Rock, Arkansas 72204

Copy To:

Karl Rubinstein, Esq.
Freytag, LaForce, Rubinstein & Teofan
1800 Skyway Tower
400 North Olive
Dallas, Texas 75201

If to the Baldwin Companies:

Peter A. Martosella, Jr.
President, Baldwin-United Corporation
Executive Vice President,
D. H. Baldwin Company
Baldwin-United Corporation
1700 Market Street, 31st Floor
Philadelphia, Pennsylvania 19103

Copies To:

Robert H. Beber, Esq.
Senior Vice President and
General Counsel
Baldwin-United Corporation
1700 Market Street, 31st Floor
Philadelphia, Pennsylvania 19103

and

Robert J. White, Esq.
O'Melveny & Myers
400 South Hope Street
Los Angeles, CA 90017

4.7 *Waiver.* The failure of any party hereto at any time to require performance by any other party of any provision hereof shall not affect in any way the right to require such performance at any time thereafter. Nor shall the waiver by any party hereto of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

4.8 *Governing Law.* The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of New York.

4.9 *Headings.* The heading of each Article, Section and Paragraph of this Agreement is for the purpose of convenience only and shall not affect the interpretation of any provision hereof.

4.10 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original hereof.

4.11 *Tolling of Statutes of Limitations.* All statutes or periods of limitation applicable to the claims and counterclaims of the Baldwin Companies and the Rehabilitators shall be tolled on the date of this Agreement and shall continue to be tolled until the termination of the Agreement pursuant to Paragraph 3.8 or otherwise.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date and year first above written.

LINDA N. GARNER, as
Rehabilitator and Receiver of
National Investors Life Insurance
Company, National Investors Pension
Insurance Company and Mt. Hood
Pension Insurance Company, and
not in her individual capacity

DON H. MILLER, as
Rehabilitator of National Equity
Life Insurance Company, Inc., S & H
Life Insurance Company and
University Life Insurance Company
of America, and not in his
individual capacity

BALDWIN-UNITED CORPORATION

By _____
Peter A. Martosella, Jr.
President

D. H. BALDWIN COMPANY

By _____
Peter A. Martosella, Jr.
Executive Vice President

EXHIBIT A

Foremost-Baldwin Partners

Mt. Hood Debenture and Note

Baldwin Enterprises Preferred and Common

Baldwin Finance Preferred

Baldwin Piano & Organ Preferred

Balunit Preferred

Balunit Common

D.H. Baldwin Commercial Paper

D.H. Baldwin Preferred

B-U Acquisition Common

Mt. Hood Stages Common

National Farmers Union Service Corporation

National Farmers Union Property and Casualty Co.

Empire Mutual Surplus Notes

330 Madison Avenue, Inc. Common and Preferred

As used herein, the term "Affiliate Assets" also includes the above-mentioned securities and other assets, as well as the direct and indirect subsidiaries of the entities whose Common stock is listed herein (except for the direct and indirect subsidiaries of National Equity Life Insurance Company, other than Foremost-Baldwin Partners, and the direct and indirect subsidiaries of University Life Insurance Company of America). By way of elaboration, but not in limitation of the foregoing, the following direct and indirect subsidiaries and affiliates of Balunit, Inc. are included in the term "Affiliate Assets":

Baldwin-United Acquisition Corp. and Subsidiaries

—Various clone companies holding MGIC Investment Corp. and Subsidiaries

—MGIC Mortgage Services Corp.

—College University Holding Co. and Subsidiaries
College University Corp.

The College Life Insurance Co. of America and Subsidiaries

College Park Corp. and Subsidiaries

Top Value Enterprises, Inc. and Subsidiaries

Bolivian Power Co. and Subsidiaries

CIP Liquidating Trust and Subsidiaries

S & H Group Inc. and Subsidiaries

The Subsidiaries and Affiliates of National Farmers Union Service Corporation, including National Farmers Union Life Insurance Company

The Subsidiaries and Affiliates of National Farmers Union Property and Casualty Company

EXHIBIT B

National Farmers Union Service Corporation and all of its direct and indirect subsidiaries.

National Farmers Union Property & Casualty Company (Utah) and all of its direct and indirect subsidiaries.

APPENDIX F

CONSTITUTION OF THE UNITED STATES

Article I, Sec. 8, cl. 4

The Congress shall have Power . . .

* * * *

To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.

Article VI, cl. 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

STATUTES

11 U.S.C. § 109 (1982).* Who may be a debtor

* * * *

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, credit union, or industrial bank or similar institution which is an

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* The versions of the Bankruptcy Code subsections excerpted here are those which apply to Baldwin's bankruptcy case. Certain provisions of title 11 and title 28 were amended by The Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333. The amendments to the excerpted subsections of title 28 apply to all cases pending on July 10, 1984, the date of enactment, Pub. L. No. 98-353, § 122(a), and have been incorporated here. The amendments to the excerpted subsections of title 11 apply only to bankruptcy cases filed 90 days after that date. *Id.* § 553(a). Since Baldwin's petition for reorganization was filed on September 26, 1983, the amendments to these title 11 subsections do not apply to Baldwin's bankruptcy case, and have not been incorporated.

insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); or

(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States.

* * * *

(d) Only a person that may be a debtor under chapter 7 of this title, except a stockholder or a commodity broker, and a railroad may be a debtor under chapter 11 of this title.

11 U.S.C. § 541 (1982). Property of the estate

(a) The commencement of a case . . . creates an estate. Such estate is comprised of all the following property, wherever located:

(1) . . . all legal or equitable interests of the debtor in property as of the commencement of the case.

* * * *

11 U.S.C. § 544 (1982). Trustee as lien creditor and as successor to certain creditors and purchasers

* * * *

(b) The trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim . . . .

* * * *

11 U.S.C. § 547 (1982). Preferences

* * * *

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of property of the debtor—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made—

(A) on or within 90 days before the date of the filing of the petition; or

(B) between 90 days and one year before the date of the filing of the petition, if such creditor, at the time of such transfer—

(i) was an insider; and

(ii) had reasonable cause to believe the debtor was insolvent at the time of such transfer; and

(5) that enables such creditor to receive more than such creditor would receive if—

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

* * * *

11 U.S.C. § 548 (1982). Fraudulent transfers and obligations

(a) The trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor—

(1) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer occurred or such obligation was incurred, indebted; or

(2) (A) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(B) (i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(ii) was engaged in business, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or

(iii) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

* * * *

15 U.S.C. § 1011 (1982). McCarran-Ferguson Act

Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

15 U.S.C. § 1012 (1982).

* * * *

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

28 U.S.C.A. § 157 (West Supp. 1984). Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b) (1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

* * * *

(C) counterclaims by the estate against persons filing claims against the estate;

* * * *

(F) proceedings to determine, avoid, or recover preferences;

* * * *

(H) proceedings to determine, avoid, or recover fraudulent conveyances.

* * * *

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

* * * *

28 U.S.C.A. § 1334 (West Supp. 1984). Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c) (1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

* * * *

(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of the estate.

APPENDIX G

The following is a list of the parent companies, subsidiaries (except wholly owned) and affiliates of the corporate petitioners, pursuant to Supreme Court Rule 28.1:

Allcity Insurance Company

Baldwin Life Insurance Company

Balunit, Inc.

The Barbados Light & Power Co. Ltd.

Brookwood Apts., Ltd.

Canadian International Power Company Liquidating Trust

Chevy Chase Associates

College/University Corporation

College/University Holding Corp.

Compania Boliviana de Energia Electrica, S.A.—Bolivian Power Company Limited

Compania de Alumbrado Electrico de San Salvador

Empire Mutual Insurance Company

Empresa de Luz y Fuerta Electrica de Oruro

Farmers & Ranchers Life Insurance Co.

Kendale Lakes Mall

Kenwood Place Associates

Lake Sherwood Joint Venture

MAC Development Corporation of Florida, Inc.

Mortgage Guaranty Insurance Corp.

Mutual Management, Inc.

Northmoor-South Apts., Ltd.

Oakhurst Square, Ltd.

Oakhurst Square II, Ltd.

Shops of Springtree

Spanish Oaks Apts., Ltd.

Spanish Oaks Apts. II, Ltd.

Top Value Enterprises, Inc.